

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JAMES PAUL BAXTER,

Petitioner,

No. C 12-5143 PJH (PR)

vs.

**ORDER FOR RESPONDENT
TO SHOW CAUSE**

E. VALENZUELA Warden,

Respondent.

Petitioner, a California prisoner currently incarcerated at the California Men's Colony has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner was convicted in Contra Costa County, which is in this district, so venue is proper here. See 28 U.S.C. § 2241(d). The original petition was dismissed with leave to amend and petitioner has filed an amended petition.

BACKGROUND

Petitioner pled guilty to second degree robbery and due to an enhancement for a prior serious felony was sentenced to seven years in prison. He says he has exhausted the claims he raises here by way of a state habeas petition.

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An

1 application for a federal writ of habeas corpus filed by a prisoner who is in state custody
2 pursuant to a judgment of a state court must “specify all the grounds for relief available to
3 the petitioner ... [and] state the facts supporting each ground.” Rule 2(c) of the Rules
4 Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’ pleading is not sufficient, for the
5 petition is expected to state facts that point to a ‘real possibility of constitutional error.’”
6 Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir.
7 1970)). “Habeas petitions which appear on their face to be legally insufficient are subject
8 to summary dismissal.” *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102,
9 1108 (9th Cir. 1996) (Schroeder, J., concurring).

10 **B. Legal Claims**

11 As grounds for federal habeas relief, petitioner asserts that: (1) The trial court
12 accepted his guilty plea without informing him of the full consequences of how credits are in
13 earned in prison in violation of state law; (2) the trial court’s sentence violated the plea
14 agreement; and (3) ineffective assistance of counsel.

15 Liberally construed, petitioner’s second and third claims are sufficient to require a
16 response. However, the first claim fails to state a cognizable federal habeas claim.
17 Petitioner argues that his plea was invalid as the trial court failed to advise him that there
18 would be a limitation to his earned credits while in prison as he would be sentenced as a
19 violent offender. Petitioner only describes state statutes that were violated, and petitioner
20 admits he pled guilty to having a prior serious felony. Petitioner objects to the state
21 statutes that require him to serve a majority of his sentence and not earn credits to leave
22 prison early. This claim will be dismissed as it only involves state law and how credits are
23 earned in state prisons. *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) (federal habeas
24 unavailable for violations of state law or for alleged error in the interpretation or application
25 of state law).

26 **CONCLUSION**

27 1. Claims one is **DISMISSED**. Claims two and three are sufficient to proceed.

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2. The clerk shall serve by regular mail a copy of this order and the petition and all attachments thereto on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.

3. Respondent shall file with the court and serve on petitioner, within sixty days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within thirty days of his receipt of the answer.

4. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a motion, it is due fifty-six (56) days from the date this order is entered. If a motion is filed, petitioner shall file with the court and serve on respondent an opposition or statement of non-opposition within twenty-eight (28) days of receipt of the motion, and respondent shall file with the court and serve on petitioner a reply within fourteen days of receipt of any opposition.

5. Petitioner is reminded that all communications with the court must be served on respondent by mailing a true copy of the document to respondent's counsel. Petitioner must keep the court informed of any change of address and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). See *Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

IT IS SO ORDERED.

Dated: February 13, 2013.



PHYLLIS J. HAMILTON
United States District Judge

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